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11 AUTOQUIP CORPORATION

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 COLEMAN ELLIOTT,

15 Plaintiff,

16 vs.

17 AUTOQUIP CORPORATION and DOES
1-25,

18 Defendants.

) CASE NO. 2:23-cv-02355-JAM-CKD

) **STIPULATION AND ORDER TO**
) **CONDUCT THE PHYSICAL**
) **INDEPENDENT MEDICAL**
) **EXAMINATION OF PLAINTIFF**
) **COLEMAN ELLIOTT**

) Complaint filed September 5, 2023

) Removed from Superior Court of San
) Joaquin County, STK-CV-UPL-2023-
) 0009514

21 **PLEASE TAKE NOTICE** that COLEMAN ELLIOTT and AUTOQUIP
22 CORPORATION, by and through their undersigned respective counsel of record, HEREBY
23 STIPULATE AND AGREE AS FOLLOWS:

24 WHEREAS, COLEMAN ELLIOTT alleged in the COMPLAINT that he suffered
25 physical injury resulting from the acts alleged in the COMPLAINT, that such injury is serious
26 and permanent; and,

27 WHEREAS, COLEMAN ELLIOTT stated in Plaintiff's Responses to Defendant
28 Autoquip Corporation's First Set of Interrogatories that COLEMAN ELLIOTT sustained

injuries to the head, shoulders, cervical spine, thoracic spine, and lumbar spine with pain radiating to his extremities; and,

WHEREAS, COLEMAN ELLIOTT and AUTOQUIP CORPORATION agree that COLEMAN ELLIOTT'S physical condition is at issue in this action and good cause exists to conduct a physical examination under the conditions specified in this Stipulation; and,

WHEREAS, COLEMAN ELLIOTT and AUTOQUIP CORPORATION filed a Joint Statement Regarding Discovery Dispute regarding the scope and duration of a proposed physical examination pursuant to Fed. R. Civ. P. 35(a); and,

WHEREAS, the COURT issued an ORDER regarding the discovery dispute on February 24, 2025; and,

WHEREAS, COLEMAN ELLIOTT and AUTOQUIP CORPORATION agree that the statements herein are made solely for purposes of this Stipulation, and that nothing in this Stipulation shall be deemed an admission or other evidentiary statement admissible against any party regarding AUTOQUIP CORPORATION's potential liability to COLEMAN ELLIOTT.


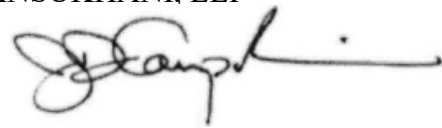
IT IS HEREBY STIPULATED and AGREED that COLEMAN ELLIOTT will undergo a physical examination ("Examination") under the following conditions:

1. **Examiner Name:** The Examination shall be conducted by Dr. Richard A. Rubenstein. A copy of Dr. Rubenstein's curriculum vitae is attached hereto as Exhibit A.
2. **Date, Time, and Duration of the Examination:** The Examination shall commence on April 23, 2025 at 1:00 p.m. PT and shall be limited to FOUR (4) hours over one day, pursuant to the Court's Order dated February 24, 2025. Mr. Elliott shall be allowed breaks, if requested, but such breaks shall not be counted toward the time allotted. The exam shall commence promptly at 1:00 p.m. Any delay in the commencement of the exam shall count toward the time of the exam.
3. **Location of the Examination:** The Examination shall be conducted at Plaza One, 3220 Blume Drive, Suite 151, Richmond, CA 94806. Plaintiff shall make arrangements to attend and bear the cost of travel, if any.

- 1 4. **Manner, Conditions, and Scope of the Examination:** The Examination shall include
2 and be limited to an evaluation of the claims of physical injury identified by
3 COLEMAN ELLIOTT as in controversy in the above-referenced cause. Dr. Rubenstein
4 is permitted to ask any question relevant to diagnosis. This may include questions
5 related to occupational history and prior injuries and diseases, if relevant to diagnosis.
6 Dr. Rubenstein will use reasonable efforts to not duplicate questioning that is covered
7 by available medical records and COLEMAN ELLIOTT's deposition testimony.
8 COLEMAN ELLIOTT is asked to bring with him any and all medications that he is
9 currently taking. Dr. Rubenstein intends to administer a standard (physical) neurologic
10 examination. An example of a test battery given in another similar examination has been
11 disclosed to COLEMAN ELLIOTT's counsel. While Dr. Rubenstein would expect this
12 examination to be similar to that disclosed to counsel, final determination of necessary-
13 to-diagnosis testing will be determined at the time of testing. In any event, the
14 examination will not include procedures that are painful, protracted, or intrusive, and
15 will not include examination of the following specific body parts: genital, anal, or rectal
16 pursuant to the Court's Order dated February 24, 2025. No imaging or other invasive
17 diagnostic procedures will be performed (e.g. an EMG). COLEMAN ELLIOTT will be
18 required to change into a hospital-type gown for the examination.
- 19 5. **Medical Records:** Dr. Rubenstein shall be provided with medical records by the
20 Defendant. Plaintiff will be provided a copy of any records provided to Dr. Rubenstein
21 at the same time as Dr. Rubenstein's report is provided.
- 22 6. **Information Obtained Beyond the Scope of the Examination:** Information obtained
23 by Dr. Rubenstein, at Examination, that is not otherwise discoverable and beyond the
24 agreed upon scope of the permitted examination shall not be relied upon by any expert
25 to form his or her opinion. Any information obtained by Dr. Rubenstein, at
26 Examination, that is that is not otherwise discoverable and beyond the scope of the
27 permitted Examination shall be inadmissible at trial.
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7. **Recording the Examination:** The Examination shall not be transcribed or audio recorded by COLEMAN ELLIOTT or any other individual. Dr. Rubenstein may dictate notes during the examination. Defendant shall provide a copy of any dictation and/or notes made by the evaluating doctor.
8. **Persons Allowed in the Examination:** COLEMAN ELLIOTT and Dr. Rubenstein shall be present during the Examination. Dr. Rubenstein may be assisted during the Examination by a member(s) of Dr. Rubenstein's staff. No other individuals, including counsel for either party to this lawsuit, are permitted to be present for the Examination.
9. **Exchange of Examination Reports:** The parties agree that a thorough report of the Examination detailing the tests conducted will be provided contemporaneously to counsel for both Plaintiff and Defendant following the Examination. The parties further agree that the report will include all of the examiner's findings, including the results of all tests made, diagnoses, and conclusions. Plaintiff and Defendant will also be provided with any and all draft reports prepared by Dr. Rubenstein.

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| <p>Respectfully submitted:</p> <p>VIADRO LAW, LLP</p> <p>By: </p> <p>_____ Christopher A. Viadro Ethan P. Niedermeyer Attorneys for Plaintiff Coleman Elliott</p> | <p>Respectfully submitted:</p> <p>GORDON REES SCULLY MANSUKHANI, LLP</p> <p>By: </p> <p>_____ J. Dominic Campodonico Attorneys for Defendant Autoquip Corporation</p> |
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IT IS SO ORDERED.

Dated: March 7, 2025


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE